Jurisdictional Statement

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SUPREME COURT, U.S.

No. 81-6157

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

MANFRED WOLFSON,

Appellant

v.

PAUL MURRAY , BERNARD HYINK, FLOYD MULLINIX, BRUCE RICHARDSON and STATE PERSONNEL BOARD,

Appellees.

APPEAL FROM JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MANFRED WOLFSON
1972 N. Ontario Street
Burbank, California 91505
Appellant in pro per

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

MANFRED WOLFSON,
Appellant,

v.

PAUL MURRAY, BERNARD HYINK,
FLOYD MULLINIX, BRUCE RICHARDSON
and STATE PERSONNEL BOARD,
Appellees.

JURISDICTIONAL STATEMENT

Manfred Wolfson is herein appealing pro se from the judgment below, of the United States Court of Appeals for the Ninth Circuit, dated October 5, 1981, and the Order, dated November 4, 1981, denying petition for rehearing, as set forth in the Appendix, and this jurisdictional statement is submitted in order to show that the Supreme Court has jurisdiction of the appeal and that substantial questions are presented.

The jurisdiction of the Supreme Court to hear this appeal rests upon 28 U.S.C. section 1254.

The Court of Appeals affirmed the denial by the District Court of appellant's motion for relief under FRCP 60(b)(6) and granted appellees motion for summary judgment on the ground that the principles of res judicata as held binding in the Ninth Circuit bar appellant's cause of action before a federal forum. The appellant's motion for reconsideration, denied by the District Court on February 4, 1980, was also affirmed by the Court of Appeals and Respectful Prayer for Rehearing en Banc, dated November 16, 1981, has remained unanswered. The Notice of

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Appeal was filed on January 25, 1982, and a copy is enclosed in the Appendix, which also contains copies of the California State Personnel Board Decision, dated September 2, 1971, the Findings of Fact and Conclusions of Law by the California Superior Court, dated April 29, 1976, granting writ of mandate directing appellant's reinstatement to the faculty of Sacramento State, and the Decision by the California Court of Appeal, dated July 29, 1977, reversing the judgment of the Superior Court.

Questions Presented.

1. Whether application of the res judicata doctrine, upon production of physical proof pointing to collusion between state agencies, thereby both covering-up hidden tampering with substantial favorable evidence and thereby preventing reconvening of the administrative hearing affecting fundamental vested rights is in conflict with Sea-Land Serv. Inc. v. Gaudet (414 U.S. 573, 578-579), Brown v. Felsen(442 U.S. at 132), as well as with Allen v. McCurry, (101 S.Ct. at 415 and 418), as articulated in Memorandum of May 26, 1981, p.6, line 3 ff., ordered to the panel by Circuit Judge Reinhardt, June 12, 1981, in Petition for Rehearing, dated October 18, 1981, p.1, line 7 ff. and p.11, line 12 ff. and Respectful Prayer, dated November 16, 1981, p.3, line 13 ff.(enclosed in Appendix) ?

2. Whether the Ninth Circuit erred in disregarding the new "fair and reasonable" res judicata principles enunciated in Gallagher v. Frye (631 F.2d 127, 130), as Deputy Attorney General Goode's list (Appendix) and the "are contained" phrase was a "fraudulent inducement" to rely upon it, and a "separate wrongful conduct" (from the question on the validity of the resignation and whether interruption of the hearing violated due process), thereby making the special circumstances of "doctrine of estoppel in pais" (equivalent to "equitable estoppel") apposite and

the absolute bar explicitly not controlling, because the appended Ninth Circuit decision in the specific page references to Gallagher, supra, excludes Bankers Trust (282 F.2d 106), its antecedent ?

3. Whether the Ninth Circuit erred in affirming the deference to the prior state proceedings, and failing to weigh, whether the circumstances fully listed in the DECLARATION OF MANFRED WOLFSON IN SUPPORT OF MOTION FOR RELIEF UNDER RULE 60(b), pp. 3 ff., of August 22, 1978 (Appendix) would be "exceptional circumstances" embraced under Younger v. Harris, (401 U.S. 37, at 56) ?

4. Whether the Ninth Circuit decision, holding that the issues "could have and therefore should have been raised", erred by not differentiating on the one hand, between the issue of the "hidden maneuver" at the state agency in 1971 (with alleged resulting failure to reconvene the incomplete hearing), discovery of which was both belated and accidental (from discrepancy in RECEIVED stamp among documents CR#33G and CR#33D, on the reverse side on the former and in front on the latter), revealing different agencies, the significance of which comes only upon the premise of misfiling of the original, and on the other, the number variance in evidence items listed by hearing reporter in 1972, as opposed to listing by state attorney general in 1973, an issue which is within the normal range of consideration by attorney ?

5. Whether the Ninth Circuit decision erred in failing to address the issue of denial of sought benefits for travel to the home community and the forum court, for independent scrutiny of the records, which the district court had found "irrelevant", and having earlier ruled from the bench, that appellant would be bound by the state decision, if appellant's attorney had omitted to raise a point (RTA, p.28, line 25ff.) ?

6. Whether the Ninth Circuit decision erred by not addressing the issue of provisions in F.R.C.P. Rule 56(f), because sought continuance for the purpose of obtaining from the previous attorney physical copies of the disputed evidence items for scrutinizing them had been denied, notwithstanding that his handwritten note sent by his messenger to the district court during a recess at the oral hearing on December 10, 1979, contained the plea of difficulty in locating the sought exhibits (CR#24M) and that appellant by letter of January 1, 1980, had again requested these items (CR#26F), and they were mailed only on January 28, 1980, (CR#33C), so that there was insufficient time to discern fully the meaning of the RECEIVED stamp discoveries (CR#33A) before the denial of the sought reconsideration and the ordered closing of the case, dated February 4, 1980 ?

Statement of the Case.

On June 4, 1971, appellee Hyink (in violation of the regulations) denied the sought grievance hearing -- details in Declaration of August 22, 1978, p.9, lines 17 ff.(Appendix)-- in which appellant wanted airing of the complaint on his termination from the faculty against his expressed will, based on alleged invalid "resignation", as chairman Murray had adjourned the department meeting on November 9, 1970, at which the two issues: correction of purported salary rank inequity and tenure balloting had been set, but before the decision on either matter had been completed, so that without "rehire" offer, there was no resignation. Thereupon, while constituting a weighty federal issue (Perry v. Sindermann, 408 U.S. 602 and 603 and Whitner v. Davis, 410 P.2d 24), the Chancellor's General Counsel advised appellant to attempt to set aside the "resignation" under the state education code, a hearing for this was set on August 9,

1971, before the State Personnel Board. The hearing officer had interrupted the hearing before either chairman Murray or President Hyink had ever testified, for the purpose of receiving an offer of proof and/or further evidence from appellant. Appellant's offer of proof, with declarations enclosed therein, both rebutting the chairman version as given in a letter of 1970 and challenging the denial of requested pre-termination hearing, had been timely received by the state board, however, the hearing was never reconvened for receiving the evidence items or to hear the testimony of persons on the acts alleged therein. Instead, hearing officer's recommendation, that appellant's petition to set aside be denied, on the grounds that the explanations were "just plain unbelievable" was accepted by the board on September 2, 1971 (CR#3PP, California State Personnel Board Decision, appended). After prolonged dispute about the scope of the administrative record, during which appellant was at times without attorney, as well as the nature of judicial review in a case affecting fundamental vested rights, the Superior Court in April 1976 granted the writ of mandate, directing appellant's reinstatement to the faculty at Sacramento State, based on findings of fact (Appendix). While appellant was in West Germany on research grant, the State Personnel Board appealed to the California Court of Appeal, where the Superior Court was reversed on July 29, 1977 (Appendix). A rehearing was denied on July 18, 1977 and also petition for hearing before the California Supreme Court on August 25, 1977. During the month of August 1977, after receiving the July 29, 1977 decision (which had come by surface mail) appellant took it to the U.S. Consulate at Hamburg, West Germany and obtained approval for return to the home community and the forum court, as fully described in the Declaration of November 30, 1979, (CR#22), appended. On August 24, 1978, within one year from the date when the state

supreme court had denied a hearing on the reversal, appellant (having been denied timely return to Northern California on the "Repatriation Program") filed an action in the Eastern District of California, together with a motion for relief from judgment under FRCP 60(b), from the Washington D.C. area, being without benefit of the California court submissions during the years of being outside of the United States. After bus travel to Southern California, for which friends had given money, an amended complaint (CR#6) was filed on February 13, 1979, the prayer of which asked for a de novo hearing "if the court should find that the decision of the state board resulted ... from extrinsic fraud ..." (p.58, lines 19 ff.). After the submissions filed in the Court of Appeals on October 1, 1976 and February 8, 1977, respectively, had been made available, appellant filed UPDATED OPPOSITION TO MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT (CR#19), pursuant to order of Chief Judge Wilkins on August 16, 1979. On January 3, 1980, after having denied continuance, the District Court denied the timely brought 60(b) motion on the grounds that under subdivision 6 of the rule insufficient showing had been made and also granted appellees motion for summary judgment on the grounds of res judicata as defined in the Ninth Circuit. In January 1980 further records had been received through FOIA, substantiating, that appellant had been kept in New York against his will on federal funds, at a time, when he wanted to be in California to scrutinize the records relevant to the serious stigma contained in the dicta of the Court of Appeal decision, however, a petition for reconsideration was denied by the District Court in its February 4, 1980, Order, which closed the case without permitting Second Amended Complaint. On March 13, 1980 an appeal was filed with the Ninth Circuit, but after briefs were filed, appellant upon viewing the disputed evidence items in person at Sacramento, discovered, that the

RECEIVED date stamp on the offer of proof to the state board was not from it, but from the Office of General Counsel, opposing during the litigation before the board. This matter was ordered to the panel for consideration by Circuit Judge Nelson in October 1980. An oral hearing before the panel was held, at which appellant was without counsel, on September 16, 1981 and then followed the decisions specified on page 1, lines 16-17 (Appendix). On January 22, 1982, appellant sent a Notice of Appeal to the Clerk, United States Court of Appeals for the Ninth Circuit.

How the federal question was presented. That the decision of the state board may have been procured as a result of extrinsic fraud, having been articulated in the prayer of the Amended Complaint, was raised in UPDATED OPPOSITION, CR#19, page 5, following quotation of a leading text in administrative law, wherein it was discribed, that "at this dark phase of agency litigation ... internal or external forces may lurk and ambush a litigant without his knowing what happened ...."(Ibid. p.4, lines 28-30, Appendix), and with the claim, that "through such a hidden maneuver key parts of the evidence ... having duly and timely arrived in the state office building, had been sidetracked and misfiled ... had in fact not been adjudicated by the hearing officer in August 1971" (Ibid. p.5, line 16-22). This was followed by proof of a circumstantial nature, but then there was not yet discovery of proof from which the constructive fraud in the conception of the evidence could be adduced, however, this belated discovery shows, that both "internal" and "external" forces under color of state law had been covertly operating, so that the issue of extrinsic fraud, specified in the 1980 Pocket Case to C. Wright & A. Miller, Federal Practice and Procedure, Section 2868, as coming under the rubric of Rule 60 (b)(6), the authority referenced by the District Court Order.

At the District Court it was alleged, that there is a close connection between the denial of due process (and the right of free expression at the department meeting), the denial of the grievance hearing on this by the then President Hyink and the denial of procedural process required in administrative hearings (Amended Complaint, pp. 2, 12-18, 19-20, 29, and 40), indeed, even reaching as far as the subsequent opposition to already approved return to Northern California travel benefits under the "Assistance for United States Citizens Returned from Foreign Countries" Law, listed below (PRECISATION OF GROUNDS FOR CONTINUATION OF ARGUMENT, dated January 6, 1980, pp. 1-3, CR#29), in as much as the "hidden maneuver", allegedly obstructing justice in 1971, ultimately brought about the 1977 decision, which was employed to limit not only timely return, but implicates appellant's liberty of employment in his chosen profession and / or related fields.

At the oral hearing on September 16, 1981, appellant gave expression to the "freedom from arbitrary adjudicative procedures ... (as) a substantive element of personal liberty and due process" by citing Professor van Allstyne (62 Cornell Law Rev. at 487), adding that in the recent Ninth Circuit decision in U.S. v. First National Bank of Circle, August 7, 1981, there was condemnation of "the days of trial by ambush". Right there the quotation from CR#19, pp. 4-5 was repeated, with the C.J.S. definition of "ambush as getting at an enemy from a position of concealment" to underline, that the "hidden maneuver" is inconsistent with our system of the rule of law, ending with the plea that "the rare and extraordinary unfairness in the prior proceedings is now very apparent".

At the oral hearing, in order to plead against the absolute res judicata bar, it was also pleaded by referring to the Memorandum of May 26, 1981, which was amplified in Petition for Re-

hearing, p.4, line 11 to p.5, line 16. The issue of denial of the"travel to home community" benefits under a federal-state program intended by Congress to assist indigent repatriates, as having been both arbitrary and irrational, as well as having limited appellant's rights under the Fifth Amendment, was raised in OPENING BRIEF, pp. 27 ff. The OPENING BRIEF, at p.4 articulates the issue of possible application of the exception under Younger. The issue of provisions in FRCP Rule 56(f) was raised pursuant to FRCP Rule 28(j) in letter to the Clerk, received August 5, 1981 (Appendix).

The Questions Are Substantial.

The federal questions sought to be reviewed are of gravity not only to appellant, currently victimized from prior assault upon his integrity, allegedly produced by the fraud and concealment described, but are of general importance, in as much, as the matter in the footnote 2 of Gallagher cited in the Ninth Circuit decision (Appendix) rejects both the liberal res judicata preclusion practice in the Third Circuit and the suggestions by the UCLA commentator. Professor Danelski's position, urging adoption of the rule in the Third Circuit (Appellant's Supplemental Brief, pp. 9-10), was not joined, being considered extreme (Petition for Rehearing, p.5, lines 9-16), but appellant asked instead for some flexibility consistent with "fair and reasonable" res judicata principles, as found in Gallagher (Part II, which the Ninth Circuit reference excludes). The point elucidated in the UCLA Law Review, Vol. 27, p. 220, had earlier been seen as an "important and timely issue" (in the words of Mr. Justice White, joined by the Chief Justice, Mack v. Florida State Board of Dentistry, 401 U.S. at 961), namely, whether under certain circumstances habeas practice may be applied analogically.And the present case embodies the factors

specified under (f) and (g) of footnote 195 at p. 220, to wit, fraud and concealment, inconsistent disposition of the controversy and (as a result of thereby unjustly imposed stigma) severe and ongoing restraints of liberty in employment opportunities for appellant, who, according to the records in the Chancellor's office, had been found a "superior professor" (CR#6M).

Until the Supreme Court decides on the circumstances under which a federal forum for redetermination is appropriate, as referenced in Montana v. United States, 440 U.S. at 164, fn.11, (Petition for Rehearing, p.3, lines 13-19), there will be conflict in the federal circuits, with a rigid res judicata doctrine upheld as the law of the Ninth Circuit (Gallagher v. Frye, 631 F.2d 127 at 129, fn.2) and other circuits, not only the Third Circuit in New Jersey Ed. Assn. v. Burke, 579 F.2d 764, 774, but also the Second Circuit, which uses a more conservative res judicata standard, harmonious with state court requirement, to examine, whether a litigant had "a full and fair opportunity" (Winters v. Lavine, 574 F.2d 46, 58-59, fn. 14) and the Tenth Circuit, which tests "whether a litigant has had a 'full and fair opportunity for judicial resolution' (Brown v. DeLayo, 498 F.2d 1173, 1175-1176).

Conclusion.

With the foregoing reasons, appellant hopes to have shown, why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

DATED: January 29, 1982

Respectfully submitted,

Manfred Wolfson

MANFRED WOLFSON
Appellant in pro per

Appendix
separate

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 5 1981

CLERK, U.S. COURT OF APPEALS

MANFRED WOLFSON,	)	
	)	
Plaintiff-Appellant,	)	No. 80-4116
	)	
v.	)	D.C. No. 78-487
	)	
PAUL MURRAY, et al.,	)	MEMORANDUM
	)	
Defendants-Appellees.	)	
	)	

Appeal from the United States District Court
for the Eastern District of California
Thomas J. MacBride, District Judge, Presiding
Argued and submitted September 16, 1981

Before: HUG and ALARCON, Circuit Judges, and TAKASUGI*, District Judge.

Summary judgment was entered by the district court in favor of the defendants-appellees. Wolfson's subsequent motion for reconsideration of the judgment was denied and Wolfson appeals. We affirm the district court. The issues raised by Wolfson could have and therefore should have been raised in the previous state court proceedings. Gallagher v. Frye, 631 F.2d 127, 128-29 & n.2 (9th Cir. 1980); Scoggin v. Schrunk, 522 F.2d 436, 437 (9th Cir. 1975), cert. denied, 423 U.S. 1066 (1976). Wolfson's federal suit is barred by the doctrine of res judicata. Id.

AFFIRMED.

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CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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MANFRED WOLFSON,

Plaintiff,

v.

PAUL MURRAY, BERNARD HYINK, and FLOYD MULLINIX,

Defendants,

BRUCE RICHARDSON and STATE PERSONNEL BOARD,

Respondents.

CIVIL NO. S-78-487

ORDER

On January 4, 1980, this court filed an Order in the above-referenced action which denied plaintiff's motion for relief from a state court judgment under FRCP 60(b), granted defendants' motion for summary judgment on grounds of res judicata, and deemed the remainder of defendants' motions moot. As noted therein, this court considered all documents submitted by plaintiff in the interim between the December 10, 1979 hearing, at which this court ruled on the motions from the bench, and the January 4, 1980 issuance of the Order reducing those rulings to writing. Consideration of those documents may have been unorthodox because they were submitted after the court had ruled on the motions, but this court wished to afford plaintiff, who is proceeding in pro

persona, a last opportunity to present arguments in support of his claim. Having found nothing that might alter the oral rulings, this court reduced the rulings to writing, denied plaintiff's request for additional argument, and directed that judgment be entered. Judgment was entered on January 8, 1980.

On January 8, 1980, plaintiff filed a document captioned "Precisation of Grounds for Continuation of Argument on Motion." At the time this document arrived, this court examined it and concluded that no material new information was presented and, accordingly, took no action. On January 21, 1980, plaintiff filed a "Notice of and Petition for Reconsideration of Motion ... and Interim Memorandum of Points and Authorities," accompanied by a second packet of materials inadvertently not enclosed with the petition. An "Addendum" to the Interim Memorandum was filed on January 28, 1980. Plaintiff requests that a hearing be scheduled at which he might present arguments in support of reconsideration.

Plaintiff seeks reconsideration for a series of reasons. First, plaintiff states: "Not all of the submissions sent in the post-hearing period reached the court, when the order was issued." In fact, the materials captioned "Further Evidence Supporting Comments," namely, the Comments previously submitted, and "Memorandum Regarding Supplemental Facts" arrived at the court on January 4, 1980, the same day the Order was filed. This court considered these materials sua sponte but found no basis for alteration of its Order signed the day before and, for that reason, the Order was filed.

Second, plaintiff states: "An attorney is now being sought, to properly represent plaintiff in federal court in

this action." If plaintiff is successful in obtaining counsel, then that counsel may make whatever motion, if any, that may be appropriate. The fact that plaintiff is now seeking an attorney is not a basis for alteration of the court's Order, particularly in the light of plaintiff's failure to find an attorney to accept the case during the months that passed while the motion to dismiss or for summary judgment was pending.

Third, plaintiff urges:

> Some of the evidence long sought from the federal agencies connected with plaintiff's repatriation to California from Germany in August and September 1977, has only belatedly and only by use of the Freedom of Information Act, in part been made available in January 1980 and requires deliberation together with the other pleadings and defenses ....

At least some of the evidence referred to is included in the packet of materials submitted in support of plaintiff's request. This court understands from these materials and the explanations provided in a number of memoranda submitted by plaintiff that the plaintiff and his family encountered difficulties in the fall of 1977 when being repatriated into the United States from Germany. During the summer and fall of 1977, plaintiff's state court case was on appeal to the California Court of Appeal for the Third Appellate District and then on appeal to the California Supreme Court. Plaintiff's counsel decided not to file a petition for certiorari to the United States Supreme Court. Plaintiff explains in his memoranda that the timing of these events made consultation with his counsel more difficult during the appellate process and also had the effect of preventing plaintiff from reviewing documentary materials concerning the case which were located in California while he was financially unable to travel to California from the East Coast. Insofar as

these materials are submitted in support of a contention that this court could or should grant relief from the state court judgment, the materials are simply not relevant. As explained in this court's January 4, 1980 Order, this court cannot grant relief under FRCP 60(b) from a final state court judgment and, even if such relief might be possible, it would be an abuse of discretion to grant relief under the facts of this case. Similarly, insofar as the materials are offered in an attempt to undermine the res judicata effect of the state court judgment, they are irrelevant. The doctrine of res judicata would be wholly destroyed if a party could avoid its effect by establishing that personal or financial inconvenience had interfered with his prosecution of the initial suit. See generally Hutcherson v. Lehtin, 485 F.2d 567 (9th Cir. 1973); Scott v. California Supreme Court, 426 F.2d 300 (9th Cir. 1970). See also Spence v. Latting, 512 F.2d 93 (10th Cir. 1975); Bartlett v. Connors, 455 F.2d 455 F.2d 459 (6th Cir. 1972).

As a fourth basis for reconsideration, plaintiff states that his former counsel, Thomas W. Martin, "in a disclosure made only following the oral hearing, has furnished an additional jurisdiction base." The barrier preventing plaintiff from relitigating the events surrounding the termination of his employment is not a lack of jurisdiction, so any additional jurisdictional base that has come to light is irrelevant. This court has not questioned the existence of jurisdiction in this matter.

Finally, plaintiff states: "The Second Amended Complaint to be prepared by plaintiff's counsel, after the necessary pleading, will state a claim upon which jurisdiction can be granted." This court has ruled and judgment has been entered on the ruling, that plaintiff is absolutely

barred from litigating in the federal courts the issues raised by the events which occurred at the time plaintiff ceased to be employed by Sacramento State College. No second amended complaint may be filed in this action because the case is closed. Res judicata bars further litigation of those facts. To paraphrase the Ninth Circuit:

> [Plaintiff] may or may not have had a good case in the California state courts in connection with his [separation from employment]. Even good cases can be lost. California had jurisdiction and he lost his case there. The issues have all been decided against him there. It is a clear situation of res judicata.

Scott v. California Supreme Court, supra at 301.

The case is closed. This court will not reconsider its ruling that res judicata bars litigation of the facts and questions arising from plaintiff's separation from employment. Right or wrong, the judgment of the California courts is final, and the matter cannot be reopened in this court.

IT IS SO ORDERED.

DATED: February 4, 1980

UNITED STATES DISTRICT JUDGE

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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MANFRED WOLFSON, Plaintiff,	)	
v.	)	CIVIL NO. S-78-487
PAUL MURRAY, BERNARD HYINK, and FLOYD MULLINIX, Defendants,	)	
BRUCE RICHARDSON and STATE PERSONNEL BOARD, Respondents.	)	

ORDER

The above-referenced action came on for hearing on December 10, 1979 on a motion for dismissal or summary judgment by defendants and respondents (hereafter referred to as defendants) and on a motion for relief from a state court judgment by plaintiff. Prior to hearing oral arguments, the court carefully examined all briefs, exhibits and other documents in the court's files and engaged in independent research relevant to the case. After hearing oral arguments, this court ruled on the motions from the bench, and these rulings are hereby reduced to writing. Between December 10, 1979 and the present date, plaintiff has submitted a number of additional documents and additional briefing in support of his position. Although it may be unorthodox to do so, this court has

carefully reviewed all of the materials submitted by plaintiff since the hearing. None of these materials provide legal support for decisions that differ from the rulings previously issued. The motions before the court are hereby resolved as follows.

First, plaintiff's motion for relief from a judgment, pursuant to FRCP 60(b), is denied. The judgment from which plaintiff seeks relief is a final decision of the California state courts. Rule 60(b) is intended primarily, if not totally, as a vehicle for relief from a judgment entered by the same federal district court to which the motion for relief is directed. The Rule was not designed to authorize a federal court to grant relief from a state court judgment. Plaintiff points out that Rule 60(b) provides in part: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding ... or to set aside a judgment for fraud upon the court." This court does not believe that the quoted language was intended to permit or encourage a federal court to grant relief from or to set aside a state court judgment, and plaintiff's motion is denied on that basis. As an alternative ruling, however, this court holds that, insofar as the court may be empowered to take cognizance of an "independent action" as urged by plaintiff, it would be an abuse of discretion to do so under the facts presented in this action. A decision granting relief from the state court judgment herein would undermine the policies inherent in the doctrine of res judicata. Notwithstanding the mass of materials presented by plaintiff and reviewed by the court, no showing of extraordinary circumstances has been made that could possibly justify departure from the principles served by the doctrine of res judicata. Moreover, the federal courts are properly reluctant

to intervene in matters before the state courts; the basis for this reluctance is found in

> the notion of "comity," that is, a proper respect for state functions, a recognition that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.... What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Government, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.

Younger v. Harris, 401 U.S. 37, 44-45 (1971). That interference in a state court judgment that plaintiff requests would be appropriate, if ever, only upon a showing of the most extraordinary circumstances; no such showing has been made herein. See generally C. Wright & A. Miller, Federal Practice and Procedure § 2868.

Second, defendants' motion for dismissal or for summary judgment on grounds of res judicata is granted. It is appropriate to treat the motion as a summary judgment motion pursuant to FRCP 56 because the court has considered all the exhibits and other documents outside the pleadings submitted by the parties. Under the Ninth Circuit rule set forth in Scoggin v. Schrunk, 522 F.2d 436, 437 (9th Cir. 1975), cert. denied, 423 U.S. 1066 (1976),

> It is now established that where the federal constitutional claim is based on the same asserted wrong as was the subject of a state action, and where the parties are the same, res judicata will bar the federal constitutional claim whether it was asserted in state court or not, for the reason that the state judgment on the merits serves not only to bar every claim that was raised in state court but also to preclude the assertion of every legal theory or ground for recovery that might have been raised in support of the granting of the desired relief.

Accord, Williams v. Washington, 554 F.2d 369, 371 (9th Cir.

1977). Although the parties named herein differ in part from the parties named in the state court action, the difference is not sufficient to alter the result required by Scoggin. Brown v. DeLayo, 498 F.2d 1173, 1175-76 (10th Cir. 1974). A careful comparison of the pleadings in this action and those in the state court proceedings reveals that all issues presented herein either were raised or might have been raised before the state court. Under these circumstances, the doctrine of res judicata is fully applicable; as the Ninth Circuit has explained:

> [the fact that plaintiff's] litigation efforts have been unsuccessful does not warrant rejection of res judicata; that doctrine is generally applied only because one side to litigation has lost and one side has won.

Pacific Telephone & Telegraph Co. v. Public Utilities Comm'n, 600 F.2d 1309, 1316 n.15 (9th Cir. 1979). This court's decision to grant summary judgment under the facts presented is compelled by the Ninth Circuit's Scoggin rule. As an alternative ruling, however, this court notes that summary judgment would be appropriate even under the more liberal Second Circuit rule reflected by such cases as Lombard v. Board of Education, 502 F.2d 631 (2d Cir. 1974), cert. denied, 420 U.S. 976 (1975). Under that rule, res judicata would bar relitigation of all issues actually presented to the state court. Although plaintiff makes reference to certain factual matters not discovered in time to present to the state court, the basic issues set forth in the pleadings and documents filed in this action were also presented to the state court for its consideration.

Third, the foregoing ruling granting defendants' motion for summary judgment renders moot the remainder of defendants' motions, namely, the motions for dismissal for failure to provide a short and plain statement of the claim

as required by FRCP 8, for dismissal pursuant to the immunity accorded by the Eleventh Amendment, and for dismissal based on the running of the statute of limitations. This court makes no comment on these motions.

As a final matter, this court recognizes that plaintiff's Comments, filed December 26, 1979, state that plaintiff requests

> leave to continue argument, so that based on all of the relevant material, counsel for plaintiff may clearly and cogently submit the required pleadings and that he be heard, and so that due deliberation may be had on whether there are genuine issues of material fact ....

If there appeared any basis for a conclusion that additional argument, with or without counsel representing plaintiff, would afford grounds for this court to alter its decision on the rulings set forth above, this court would entertain plaintiff's request for continued argument. A careful review of the facts and pleadings leads to the contrary conclusion. Additional time would only prolong the proceedings without purpose. Accordingly, plaintiff's request for additonal argument is denied.

All motions having been resolved, and summary judgment having been granted in favor of defendants and respondents, it is ordered that final judgment be entered.

IT IS SO ORDERED.

DATED: January 3, 1980.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 80-4116

RECEIVED
CLERK U.S. COURT OF APPEALS
JAN 25 1982
FILED 1/25/82
DOCKETED DATE INITIAL

MANFRED WOLFSON,
Appellant,

v.

PAUL MURRAY, BERNARD HYINK, et al. and STATE PERSONNEL BOARD,
Appellees.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Manfred Wolfson, appellant above named, hereby appeals to the Supreme Court of the United States the judgment of the United States Court of Appeals for the Ninth Circuit, dated October 5, 1981, as well as the denial of Petition for Rehearing, dated November 4, 1981.

January 22, 1982

Manfred Wolfson

Manfred Wolfson
1972 N. Ontario Street
Burbank, California 91505
Appellant in pro per

CERTIFICATE OF SERVICE
(attached) to:
Attorney General
George Deukmejian
555 Capitol Mall, Suite 350
Sacramento, CA 95814
for Appellees

81-6157

No.

RECEIVED
FEB 2 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

MANFRED WOLFSON,
Appellant,

v.

PAUL MURRAY, BERNARD HYINK,
FLOYD MULLINIX, BRUCE RICHARDSON
and STATE PERSONNEL BOARD,
Appellees.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS.

PURSUANT TO RULE 53(1) of the Rules of this Court, motion is hereby made that the appellant be allowed to proceed in forma pauperis before this Court for the reasons stated in the attached affidavit.

January 29, 1982

Manfred Wolfson
1972 N. Ontario Street
Burbank, CA 91505
Tel.: (213) 842-5920
Appellant in pro se

DECLARATION OF MANFRED WOLFSON

I, MANFRED WOLFSON, declare:

1. This declaration is being made in support of application to the United States Supreme Court for review on appeal the case (Manfred Wolfson v. Paul Murray, et al. numbered # 80-4116 before the United States Court of Appeals for the Ninth Circuit) and to explain why appellant is unable to pay fees and costs for the prosecution of sought review.

2. At present, since layoff from temporary employment, as result of reduced funding, I have been receiving weekly unemployment insurance benefits in the amount of $ 115. Therefore, I am indigent (as my wife receives a/monthly disability payment of $ 230 from West Germany and Switzerland), my two children, ages 14 and 10, are attending school, and unable to prosecute this action to the United States Supreme Court, unless the costs and fees are waived.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 29th day of January 1982 at Burbank, California.

Manfred Wolfson

MANFRED WOLFSON
Declarant

State of California)
) ss.
County of Los Angeles)

On January 29, 1982, before the undersigned, a Notary Public for the State of California, County of Los Angeles, personally appeared MANFRED WOLFSON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

OFFICIAL SEAL
JOYCE L. ALBRITON
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Jan. 4, 1985

Joyce L. Albriton

JOYCE L. ALBRITON

mhm

Manfred Wolfson
1972 N. Ontario Street
Burbank, CA 91505

RECEIVED
APR 5 - 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

March 31,1982

Alexander L.Stevas
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Manfred Wolfson,
v. ~~Paul Murray~~,et al.
No. 81-6157

Dear Mr.Stevas:

As the Court has entered an order, dated March 22,1982, denying certiorari and dismissing the appeal in the above referenced case for want of jurisdiction, I would be grateful, if the xerographed papers (prior court decisions, exhibits etc.) appended to the Jurisdictional Statement might be returned to me.

Thank you very much.

Very truly yours,

Manfred Wolfson

Rec'd 4-5